IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9913 of 1999

For Approval and Signature:
Hon'ble MR.JUSTICE A.L.DAVE

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SMITABEN W/O BABUBHAI PREMJIBHAI @ PUMAJI PRAJAPATI
Versus
COMMISSIONER OF POLICE

Appearance:
MR ANIL S DAVE for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE
Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The petitioner - Smitaben Babubhai Premjibhai @ Pumaji Prajapati, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act, dated 26th October, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous

witnesses in respect of the incidents that occurred on October 7, 1999 and October 3, 1999 and came to conclusion that the petitioner is "Immoral Traffic Offender" that her activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on 24th October, 1999 and 25th October 1999, which were verified by the detaining authority on 26th October, 1999 and the order of detention is passed on 26th October, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed. It is contended that, registration of only one offence cannot bring the case of the detention within the purview of definition of an Immoral Trafffic Offender. The order, therefore, deserves to be quashed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining

authority has to take into consideration the background, the antecedents, the character, etc. of the detenue while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenue of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. This would leave behind only one registered offence. If the definition of "Immoral Traffic Offender" is considered it reads as under.

"2(g): "immoral traffic offender" means a person who habitually continues or abets the commission of any offence under the Suppression of Immoral Traffic in Women & Girls Act, 1956;"

#. A plain reading of the above definition makes it clear that there must be habitual involvement of the detenue in such cases indicating plurality of incidents. In the instant case, as discussed above, there is only one ground available to the detaining authority which can be considered to indicate offence relating to immoral traffic. The petition therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated 26th October, 1999 is hereby quashed and set aside. The detenue - Smitaben Babubhai Premjibhai Pumaji Prajapati is ordered to be set at liberty forthwith, if not required in any matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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